IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
JULY 17, 2008 Session

DOUGLAS C. YORK, M.D. v. JOSEPH V. BATSON, ET AL.

Appeal from the Chancery Court for Williamson County
No. 31733 Robert E. Lee Davies, Judge

No. M2007-02418-COA-R3-CV - Filed September 16, 2008

This is a summary judgment case. Appellant and Appellee entered into an oral agreement for the exchange of land. Appellee negotiated the purchase of the property with a third party which he then was to exchange with Appellant. When Appellee decided to keep the property for himself, Appellant filed suit, alleging agency, breach of contract, equitable estoppel, and wrongful inducement of a breach of contract. Appellees filed a counter-claim for wrongful inducement of a breach of contract. The trial court granted Appellees' motion for summary judgment, dismissing all of Appellant's claims, but declined to grant summary judgment in favor of Appellees on their counter-claim. Finding no error, we affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

J. STEVEN STAFFORD, J., delivered the opinion of the court, in which ALAN E. HIGHERS, P.J., W.S., and HOLLY M. KIRBY, J., joined.

Emily K. Moore, Franklin, TN, Appellant
Douglas S. Hale, Franklin, TN, Appellant

Thomas J. Elmlinger, Nashville, TN, Appellees

OPINION

Appellant Douglas C. York, M.D. is the owner of a ten-acre tract of unimproved land located at the intersection of Highway 96 East and Trinity Road in Williamson County (the "York Tract"). In 2004, Appellee Joseph V. Batson and Appellee Claudine Drueke were looking for undeveloped land on which to build a house. Mr. Batson wrote to Dr. York, expressing his interest in the York Tract. Dr. York responded that the York Tract was not for sale.

Dr. York also owns a one-hundred-acre farm in Williamson County. In 2004, he was interested in expanding his farm by acquiring adjoining land. One of the parcels adjoining Dr. York was owned by Gary D. Kiviniemi (the "Kiviniemi Tract").[1]

A few months after their initial correspondence, Mr. Batson again approached Dr. York about purchasing the York Tract. Dr. York told Mr. Batson that he would not sell; however, Dr. York proposed that he would consider trading the York Tract in exchange for the Kiviniemi Tract. To that end, Dr. York proposed that Mr. Batson purchase the Kiviniemi Tract, and then exchange it for the York Tract. Dr. York indicated that the purchase price for the York Tract would be $300,000. Based upon the Jones negotiations, Dr. York informed Mr. Batson that the lowest price Mr. Kiviniemi would take for the Kiviniemi Tract was $220,000. Dr. York proposed that, in conjunction with the property exchange, Mr. Batson would make up the difference with a cash payment to Dr. York. Dr. York and Mr. Batson never entered into a written agreement.

In the course of inspecting and investigating the Kiviniemi Tract, Mr. Batson decided that the Kiviniemi Tract suited his purpose more than the York Tract. Mr. Kiviniemi set the price for the Kiviniemi Tract at $240,000. Dr. York informed Mr. Batson that he wanted Mr. Batson to make an initial offer of $205,000. As part of the agreement, Dr. York also wanted a clause imposing a penalty on Mr. Kiviniemi if Mr. Kiviniemi did not remove personal property from the Kiviniemi Tract within a specified time frame. Mr. Batson chose to offer $210,000 for the Kiviniemi Tract, and did not include the requested clause in the contract.

Thereafter, Mr. Batson informed Dr. York that he was no longer interested in the York Tract. The day before Mr. Batson was to close on the Kiviniemi Tract, Dr. York met with Mr. Kiviniemi and informed him of his agreement with Mr. Batson. Dr. York then had his attorney contact Mr. Kiviniemi to inform him that, if he went ahead with the sale to Mr. Batson, Dr. York would pursue legal action against both Mr. Batson and Mr. Kiviniemi. Mr. Kiviniemi then set up a meeting with Mr. Batson, but did not tell him that Dr. York would also be present. Following the meeting, Mr. Kiviniemi informed Mr. Batson that he was not prepared to close at that time. He also informed Mr. Batson that he would require an indemnity against any expenses he would have in defending Dr. York's suit. Mr. Batson refused to provide the indemnity, but ultimately agreed to increase the purchase price for the Kiviniemi Tract by $10,000. Thereafter, Mr. Kiviniemi and Mr. Batson closed the sale of the Kiviniemi Tract for $230,000.

On July 25, 2005, Dr. York filed suit against Mr. Batson for breach of contract and against Ms. Drueke for wrongful inducement of a breach of contract. On August 26, 2005, Mr. Batson and Ms. Drueke filed their answer and counter-claim. As affirmative defenses, Mr. Batson and Ms. Drueke alleged failure to state a claim, estoppel, and violation of the Statute of Frauds. In their

[1] Several years prior, Mr. Kiviniemi had leased property from Dr. York. Mr. Kiviniemi had fallen behind on his rents, and Dr. York had evicted him from the property. Because of this "bad blood," Dr. York initially decided to approach Mr. Kiviniemi about purchasing his property through an intermediary Wayne Jones. Mr. Kiviniemi told Mr. Jones that he would sell the property for $222,000; however, Mr. Kiviniemi ultimately broke off discussions with Mr. Jones.

counter-claim, Mr. Batson and Ms. Drueke assert that Dr. York induced Mr. Kiviniemi to breach the contract for sale and that, as a result, Mr. Batson was forced to pay $10,000 over the agreed price for the Kiviniemi Tract. Dr. York answered the complaint, denying the material allegations therein, and asserted failure to state a claim, laches, and estoppel as affirmative defenses to the counter-claim.

On May 15, 2006, Dr. York moved the court for leave to amend his complaint, which motion was granted. The amended complaint alleges that, at all relevant times, Mr. Batson was acting as Dr. York's agent. In their answer, Mr. Batson and Ms. Drueke deny that Mr. Batson was acting as Dr. York's agent, and reassert their counter-claim for wrongful inducement of a breach of contract.

On July 20, 2007, Mr. Batson and Ms. Drueke filed a motion for summary judgment. By order of October 10, 2007, the trial court granted their motion, specifically finding that there was no written agreement between the parties, that the equitable estoppel exception to the Statute of Frauds did not apply, that Mr. Batson was not Dr. York's agent, and that Ms. Drueke did not interfere with any contract between Dr. York and Mr. Batson because no contract existed. The trial court further declined to find that Dr. York had engaged in wrongful interference with the contract between Mr. Batson and Mr. Kiviniemi.

Dr. York appeals and raises one issue for review as stated in his brief:

> Whether the trial court erred in its finding that Appellee Batson was not acting as Appellant's agent in the purchase of certain real property and in granting Appellee Batson's motion for summary judgment.

Mr. Batson and Ms. Drueke raise the following, additional issues for review:

> I. Whether the trial court erred in entering summary judgment against Batson on his counterclaim against York for intentional interference with a contract under common law and under Tenn. Code Ann. §47-50-109 on the basis that York had no malicious intent to interfere with Batson's real estate purchase contract with Gary Kiviniemi, because the record does not show that there is no genuine issue as to any material fact and that York is entitled to judgment as a matter of law as required by Tenn. R. Civ. P. 56.04.
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> II. Whether the trial court erred in entering summary judgment against Batson on his counterclaim against York for intentional interference with a contract under common law and under Tenn. Code Ann. §47-50-109 on the basis that Kiviniemi did not breach Batson's real estate purchase contract with Kiviniemi, because the record does not show that there is no genuine issue as to any material fact and that York is entitled to a judgment as a matter of law as required by Tenn. R. Civ. P. 56.04.

It is well settled that a motion for summary judgment should be granted when the movant demonstrates that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law. ***See*** Tenn. R. Civ. P. 56.04. The party moving for summary judgment bears the burden of demonstrating that no genuine issue of material fact exists. ***See Bain v. Wells***, 936 S.W.2d 618, 622 (Tenn.1997). On a motion for summary judgment, the court must take the strongest legitimate view of evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. ***See id***. In ***Byrd v. Hall***, 847 S.W.2d 208 (Tenn.1993), our Supreme Court stated:

> Once it is shown by the moving party that there is no genuine issue of material fact, the nonmoving party must then demonstrate, by affidavits or discovery material, that there is a genuine, material fact dispute to warrant a trial. In this regard, Rule 56.05 provides that the nonmoving party cannot simply rely upon his pleadings but must set forth specific facts showing that there is a genuine issue of material fact for trial.***Id***. at 211 (citations omitted).

Summary judgment is only appropriate when the facts and the legal conclusions drawn from the facts reasonably permit only one conclusion. See ***Carvell v. Bottoms***, 900 S.W.2d 23, 26 (Tenn.1995). Because only questions of law are involved, there is no presumption of correctness regarding a trial court's grant or denial of summary judgment. ***See Bain***, 926 S.W.2d at 622. Therefore, our review of the trial court's grant of summary judgment is *de novo* on the record before this Court. ***See Warren v. Estate of Kirk***, 954 S.W.2d 722, 723 (Tenn.1997).

Dr. York asserts that the trial court erred in granting summary judgment against him on his complaint for breach of contract and wrongful inducement of a breach of contract. Specifically, Dr. York contends that a genuine issue of material fact exists as to whether Mr. Batson was acting as Dr. York's agent in his dealings with Mr. Kiviniemi.

As stated by this Court in ***Edwards v. Int'l Harvestor Co.***, 688 S.W.2d 456 (Tenn. Ct. App. 1985): "An important element of an agency relationship is that 'the object of the contract be for the benefit of the principal.... [T]he principal test of agency is whether the principal has the right to control the conduct of the agent with respect to matters entrusted to the agent.'" ***Id***. at 459 (quoting ***Nidiffer v. Clinchfield Railroad Co.***, 600 S.W.2d 242, 245 (Tenn. Ct. App. 1980)). Furthermore, the "[b]urden of proof is on the person attempting to establish an agency that [the] alleged agent was in fact the agent of the alleged principal and was authorized to do the acts done." ***Cobble v. Langford***, 230 S.W.2d 194 (Tenn. 1950).

The material facts in the record are undisputed; consequently, it is our task to review the trial court's legal conclusions drawn from these facts. From this review, we conclude that Mr. Batson was not acting as Dr. York's agent in his dealings with Mr. Kiviniemi. What the record reveals is that Mr. Batson and Dr. York had negotiated to exchange the Kiviniemi Tract for the York Tract. However, at no time did Dr. York propose that Mr. Batson obtain the Kiviniemi Tract in Dr. York's

name. Rather, Mr. Batson negotiated with Mr. Kiviniemi on Mr. Batson's own behalf. Furthermore, the undisputed evidence shows that Mr. Batson negotiated outside of the parameters set by Dr. York. There is no indication that Dr. York had any control of, or recourse against, Mr. Batson's decision to bid $210,000 (as opposed to Dr. York's suggested $205,000), or Mr. Batson's decision not to include the penalty proposed by Dr. York in the agreement, ***see*** *supra.* In short, there is no indication that Dr. York had any control over Mr. Batson. Because the undisputed facts show that Mr. Batson ultimately obtained the Kiviniemi Tract in his own name, and according to his own terms, we conclude that the trial court was correct in granting summary judgment in favor of Mr. Batson and Ms. Drueke on Dr. York's agency theory.

We next address the question of whether, after obtaining the Kiviniemi Tract, Mr. Batson was contractually obligated to exchange the Kiviniemi Tract for the York Tract pursuant to the agreement made between Dr. York and Mr. Batson. It is undisputed that Mr. Batson and Dr. York never reduced their agreement to writing. The Tennessee Statute of Frauds states:

> No action shall be brought...upon the contract for the sale of lands...unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person lawfully authorized by such party. In a contract for the sale of lands...the party to be charged is the party against whom enforcement of the contract is sought.

Tenn. Code Ann. §29-2-101(a)(4) (Supp. 2007).

According to Dr. York, he and Mr. Batson agreed to a purchase price of $300,000 for the York Tract. After acquiring the Kiviniemi Tract, Mr. Batson was to transfer the Kiviniemi Tract to Dr. York in exchange for the York Tract. The difference between the purchase price of the Kiviniemi Tract and the sale price of the York Tract, was to be paid in cash. Although Mr. Batson agrees that these terms were proposed by Dr. York, he disputes Dr. York's assertion that he agreed to, or was to be bound by, these terms. Furthermore, Mr. Batson contends that, because these terms constitute an agreement for the sale of land, the agreement is governed by the Statute of Frauds. Because the agreement was never reduced to writing, Mr. Batson asserts that there is no enforceable contract. Dr. York asserts that the exception of equitable estoppel takes the agreement out of the Statute of Frauds; consequently, Dr. York asserts that there is, in fact, an enforceable contract.

The purpose of the Statute of Frauds is to reduce contracts to a certainty in order to avoid perjury on one hand and fraud on the other. ***See, e.g., Price v. Tennessee Products and Chemical Corp.***, 385 S.W.2d 301 (Tenn. Ct. App. 1964). Although we concede that, in this case, there is evidence that Mr. Batson partially performed the oral contract between himself and Dr. York, it is well settled in Tennessee that an oral contract for the sale of land will not be enforced on the basis of partial performance, nor will partial performance take an oral agreement out of the Statute of Frauds. ***Baliles v. City's Serv. Co.***, 578 S.W.2d 621, 624 (Tenn. 1979). The harshness of this rule

has, however, been eased by the application of the doctrine of equitable estoppel, which Dr. York asserts in this case. Equitable estoppel is only allowed as an exception to the Statute of Frauds in exceptional cases where to enforce the Statute of Frauds would make it an instrument of hardship and oppression, verging on actual fraud:

> Equitable estoppel, in the modern sense, arises from the 'conduct' of the party, using that word in its broadest meaning, as including his spoken or written words, his positive acts, and his silence or negative omission to do anything. Its foundation is justice and good conscience. Its object is to prevent the unconscientious and inequitable assertion or enforcement of claims or rights which might have existed or been enforceable by other rules of law unless prevented by an estoppel; and its practical effect is, from motives of equity and fair dealing, to create and vest opposing rights in the party who obtains the benefit of the estoppel.

Evans v. Belmont Land Co., 21 S.W. 670, 673-74 (Tenn. 1893) (citation omitted).

Because the doctrine of equitable estoppel only applies in extraordinary cases as a bar to the Statute of Frauds, ***see Autry v. Boston***, No. E2005-001030-COA-R3-CV, 2006 WL 1132075 (Tenn. Ct. App. April 28, 2006), the following must be shown with respect to the party against whom estoppel is asserted (in this case, Mr. Batson):

> 1. Conduct which amounts to a false representation or concealment of material facts;
> 2. Intention, or at least expectation, that such conduct shall be acted upon by the other party; and
> 3. Knowledge of the real facts.

Osborne v. Mountain Life Ins. Co., 130 S.W.3d 769 (Tenn. 2004).

Equitable estoppel also requires that the following elements be shown with respect to the party asserting estoppel (in this case, Dr. York):

> 1. Lack of knowledge and the means of knowledge of the truth as to the facts in question;
> 2. Reliance upon the conduct of the party estopped; and
> 3. Action based thereon of such a character as to change his or her position prejudicially.

Id.

Turning to the record before us, we conclude that the undisputed facts do not support Dr. York's claim for equitable estoppel against Mr. Batson. First, there is no proof that Mr. Batson's conduct was consistent with the terms of the oral agreement. The record also contains no evidence of reliance on the part of Dr. York causing him to prejudicially change his position. Although Dr. York indicates that Mr. Batson's alleged breach caused him to be unable to expand his farm, caused him to incur new soil work and approval if he attempts to sell, and caused him to forfeit a tax deferral of income from the exchange of the Kiviniemi Tract, there is simply no evidence that these asserted damages amount to a prejudicial change in circumstance. It is undisputed that Mr. Kiviniemi had refused to sell the Kiviniemi Tract to Dr. York at fair market value, or at all. Consequently, Dr. York's assertion that Mr. Batson's failure to exchange the Kiviniemi Tract after acquiring same, did not put Dr. York in a position worse than that which he already faced. From the record as a whole, and the totality of the circumstances, we cannot conclude that the trial court erred in failing to grant Dr. York relief from the Statute of Frauds based upon the doctrine of equitable estoppel. Consequently, the Statute of Frauds bars Dr. York's claim that an enforceable contract existed between himself and Mr. Batson. Because a claim for wrongful inducement of a breach of contract requires an existing legal contract, ***see*** Tenn. Code Ann. §47-50-109, the trial court's decision to grant summary judgment in favor or Mr. Batson and Ms. Drueke on Dr. York's claim for wrongful inducement of a breach of contract was also correct. ***See also Quality Auto Part Co. v. Bluff City Buick Co.***, 876 S.W.2d 818 (Tenn. 1994).[2]

We now turn to Mr. Batson and Ms. Drueke's issues regarding their claim for wrongful inducement of a breach of contract on the part of Dr. York. In Tennessee, there is both a common law and a statutory tort called wrongful inducement of breach of contract that allows recovery when a third party causes a breach of contract. ***Quality Auto Parts***, 876 S.W.2d at 822; Tenn.Code Ann. § 47-50-109.

In addition to the existence of a legal contract, in order to establish a cause of action for wrongful inducement of a breach of contract, the plaintiff must also prove that: (1) the alleged wrongdoer was aware of the contract; (2) the alleged wrongdoer maliciously intended to induce a breach; (3) that, as a proximate result of the wrongdoer's action, a breach actually occurred, and (4) the plaintiff suffered damage. ***Quality Auto***, 876 S.W.2d at 823. It is undisputed in the record that, after learning of Mr. Kiviniemi's plan to sell the Kiviniemi Tract to Mr. Batson, but prior to the closing thereof, Dr. York met with Mr. Kiviniemi to discuss Dr. York's alleged agreement to sell the York Tract to Mr. Batson. Thereafter, all of the parties met and, at that meeting, Mr. Batson

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[2] Tenn. Code Ann §47-50-109 provides:

> It is unlawful for any person, by inducement, persuasion, misrepresentation, or other means, to induce or procure the breach or violation, refusal or failure to perform any lawful contract by any party thereto; and, in every case where a breach or violation of such contract is so procured, the person so procuring or inducing the same shall be liable in treble the amount of damages resulting from or incident to the breach of the contract. The party injured by such breach may bring suit for the breach and for such damages.

admitted to the agreement with Dr. York. Dr. York made it clear that he was prepared to pursue legal action. In order to remove himself from the conflict between Messrs. Batson and York, Mr. Kiviniemi offered to pay Mr. Batson $5,000 if Mr. Batson would revoke the contract for sale of the Kiviniemi Tract. The evidence shows that, when Mr. Batson refused this offer, Mr. Kiviniemi proposed that Mr. Batson pay an additional $10,000 for failing to disclose the contractual dispute between Messrs. Batson and York. This proposition was based on the fact that Mr. Batson had failed to fully disclose facts relevant to his purchase of the Kiviniemi Tract. Although Mr. Batson ultimately agreed to Mr. Kiviniemi's proposal, there is insufficient evidence to support a finding that Dr. York acted with malicious intent in informing Mr. Kiviniemi of his agreement with Mr. Batson. Furthermore, we cannot overlook the obvious fact that the contract between Messrs. Batson and Kiviniemi was never actually breached. As discussed above, the sales contract for the Kiviniemi Tract was renegotiated based upon additional facts (i.e., that Messrs. Batson and York had some agreement regarding the ultimate ownership of the Kiviniemi Tract). Because Mr. Batson and Ms. Drueke failed to satisfy the *prima facie* elements necessary to establish a cause of action for wrongful inducement of a breach of contract claim, the trial court correctly declined to grant summary judgment on their counter-claim.

For the foregoing reasons, we affirm the order of the trial court. Costs of this appeal are assessed one-half to the Appellant, Douglas C. York and his surety, and one-half to the Appellees, Joseph V. Batson and Claudine Drueke, for which execution may issue if necessary.

J. STEVEN STAFFORD, JUDGE